

CLOSED

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:09-cv-05337-RJD-VVP**

Rodriguez v. Internal Revenue Service
Assigned to: Judge Raymond J. Dearie
Referred to: Magistrate Judge Viktor V. Pohorelsky
Cause: 05:552 Freedom of Information Act

Date Filed: 12/07/2009
Date Terminated: 05/15/2013
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Jose Nuesi Rodriguez

represented by **Elizabeth Ann Maresca**
Lincoln Square Legal Service, Inc.
33 West 60th Street, 3rd Floor
New York, NY 10023
212-636-7353
Fax: 212-636-6923
Email: emaresca@law.fordham.edu
ATTORNEY TO BE NOTICED

Marcella B. Silverman
33 W. 60th Street
3rd Flr.
New York, NY 10023
212-636-7353
ATTORNEY TO BE NOTICED

V.

Defendant

Internal Revenue Service

represented by **William B. Russell**
Department of Justice, Tax Division
Post Office Box 227
Ben Franklin Station
Washington, DC 20044
202-307-0854
Fax: 202-514-6866
Email: william.b.russell@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Orelia E. Merchant
United States Attorneys Office
Eastern District Of New York
271 Cadman Plaza East
Brooklyn, NY 11201-1820
(718) 254-6058
Fax: 718-254-6081
Email: Orelia.merchant@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

Eric H. Holder, Jr.

represented by **Orelia E. Merchant**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

U.S. Attorney Benton J. Campbell

represented by **Orelia E. Merchant**
(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/07/2009	<u>1</u>	COMPLAINT (<i>Filing fee \$350 receipt #4653008629</i>) against Internal Revenue Service Disclosure Statement on Civil Cover Sheet completed –yes,, filed by Jose Nuesi Rodriguez. (Attachments: # <u>1</u> Civil Cover Sheet) (Bowens, Priscilla) (Entered: 12/07/2009)
12/11/2009	<u>2</u>	SUMMONS Returned Executed by Jose Nuesi Rodriguez. Internal Revenue Service served on 12/7/2009, answer due 2/5/2010. (Maresca, Elizabeth) (Entered: 12/11/2009)
12/11/2009	<u>3</u>	SUMMONS Returned Executed by Jose Nuesi Rodriguez. Eric H. Holder, Jr served on 12/7/2009, answer due 2/5/2010. (Maresca, Elizabeth) (Entered: 12/11/2009)
12/11/2009	<u>4</u>	SUMMONS Returned Executed by Jose Nuesi Rodriguez. Benton J. Campbell served on 12/7/2009, answer due 2/5/2010. (Maresca, Elizabeth) (Entered: 12/11/2009)
01/06/2010	<u>5</u>	MOTION for Extension of Time to File Answer by Benton J. Campbell, Eric H. Holder, Jr, Internal Revenue Service. (Merchant, Orelia) (Entered: 01/06/2010)
01/07/2010		ORDER, by electronic endorsement, granting <u>5</u> Motion for Extension of Time to Answer. Defendants' answers due 2/5/10. Ordered by Magistrate Judge Viktor V. Pohorelsky on 1/7/2010. (Newton, Joan) (Entered: 01/07/2010)
02/04/2010	<u>6</u>	ANSWER to <u>1</u> Complaint by Internal Revenue Service. (Russell, William) (Entered: 02/04/2010)
02/17/2010	<u>7</u>	SCHEDULING ORDER entered setting date for initial conference and deadline for automatic disclosures. (Attachment) Ordered by Magistrate Judge Viktor V. Pohorelsky on 2/17/2010. (Newton, Joan) (Entered: 02/17/2010)
03/11/2010	<u>8</u>	First MOTION to Adjourn Conference by Jose Nuesi Rodriguez. (Maresca, Elizabeth) (Entered: 03/11/2010)
03/15/2010		ORDER granting <u>8</u> Motion to Adjourn Conference. The 3/16/10 conference is adjourned to 3/30/10 at 10:00 a.m. Ordered by Magistrate Judge Viktor V. Pohorelsky on 3/15/2010. (Newton, Joan) (Entered: 03/15/2010)
03/25/2010	<u>9</u>	Second MOTION to Adjourn Conference by Jose Nuesi Rodriguez. (Maresca, Elizabeth) (Entered: 03/25/2010)
03/29/2010		ORDER granting <u>9</u> Motion to Adjourn Conference. The conference scheduled for 3/30/10 is adjourned to 4/13/10 at 10:00 a.m. Ordered by Magistrate Judge Viktor V. Pohorelsky on 3/29/2010. (Newton, Joan) (Entered: 03/29/2010)
04/13/2010	<u>10</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Viktor V. Pohorelsky:Initial Scheduling Hearing held on 4/13/2010. See annexed conference minutes for details. (Newton, Joan) (Entered: 04/13/2010)
06/16/2010	<u>11</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Viktor V. Pohorelsky:Telephone Scheduling Conference held on 6/15/2010. See annexed conference calendar minutes for details. (Newton, Joan) (Entered: 06/16/2010)
06/25/2010	<u>12</u>	Letter <i>Requesting Pre-Motion Conference</i> by Internal Revenue Service (Russell, William) (Entered: 06/25/2010)
06/30/2010	<u>13</u>	Letter <i>Response to Defendant's Request for Pre-Motion Conference</i> by Jose Nuesi Rodriguez (Maresca, Elizabeth) (Entered: 06/30/2010)
07/02/2010	<u>14</u>	SCHEDULING ORDER: A pre-motion conference has been scheduled for 8/6/10 at 10:30 AM before Judge Raymond J. Dearie in Courtroom 10A-S. Ordered by Chief Judge Raymond J. Dearie on 7/1/2010. (Chee, Alvin) (Entered: 07/02/2010)
08/06/2010	<u>15</u>	Minute Entry for proceedings held before Chief Judge Raymond J. Dearie: Pre-Motion Conference held on 8/6/2010. Counsel for parties present. Case called

		for pre-motion conference regarding defendant's request for permission to file a motion for summary judgment. Discussion held. Parties agree to following briefing schedule: defendant's motion due 10/15/10; plaintiff's response due 11/30/10; defendant's reply, if any, due 12/15/10. Parties are directed to follow Chief Judge Dearie's Motion Practice Rules. Oral argument will be scheduled when motion is fully briefed, if appropriate. (Court Reporter: Shelly Silverman.) (Chee, Alvin) (Entered: 08/11/2010)
12/02/2010	<u>16</u>	Letter dated 11/30/10 from Elizabeth Maresca, Esq., to W. Bradley Russell, Esq., serving plaintiff's cross-motion and opposition to defendant's motion for summary judgment. (Chee, Alvin) (Entered: 12/02/2010)
12/15/2010	<u>17</u>	MOTION for Extension of Time to File Response/Reply (<i>Motion to Set Briefing Schedule</i>) by Internal Revenue Service. (Russell, William) (Entered: 12/15/2010)
12/21/2010	<u>18</u>	MOTION for Summary Judgment by Internal Revenue Service. Responses due by 11/30/2010 (Attachments: # <u>1</u> Rule 56.1 Statement, # <u>2</u> Declaration of Vogel, # <u>3</u> Declaration of Christopher, # <u>4</u> Declaration of Mills, # <u>5</u> Declaration of Joiner, # <u>6</u> Declaration Vaughn Index) (Russell, William) (Entered: 12/21/2010)
12/22/2010	<u>19</u>	ORDER: The Court amends the briefing schedule that was previously set on 8/6/10 as follows: Defendant's response to plaintiff's cross motion due 1/24/11; Plaintiff's reply, if any, due 2/7/11. Oral argument will be scheduled when motions are fully briefed. Ordered by Chief Judge Raymond J. Dearie on 12/20/2010. (Brucella, Michelle) (Entered: 12/22/2010)
12/22/2010	<u>20</u>	RESPONSE to Motion re <u>18</u> MOTION for Summary Judgment <i>Plaintiff's Cross Motion & Opposition to Defendant's Motion for Summary Judgment</i> filed by Jose Nuesi Rodriguez. (Attachments: # <u>1</u> Memorandum in Support Memorandum of Law in Support of Plaintiff's Cross Motion & Opposition To Defendant's Motion for Summary Judgement, # <u>2</u> Plaintiff's Response to Defendant's Statement of Material Facts and Exhibits A thru C, # <u>3</u> Plaintiff's Response to Defendant's Statement of Material Facts – Exhibit D1, # <u>4</u> Plaintiff's Response to Defendant's Statement of Material Facts – Exhibit D2, # <u>5</u> Plaintiff's Response to Defendant's Statement of Material Facts – Exhibit D3 – Part 1, # <u>6</u> Plaintiff's Response to Defendant's Statement of Material Facts – Exhibit D3 – Part 2, # <u>7</u> Plaintiff's Response to Defendant's Statement of Material Facts – Exhibits E thru G) (Maresca, Elizabeth) (Entered: 12/22/2010)
12/30/2010	<u>21</u>	REPLY in Support of <i>Motion for Summary Judgment</i> filed by Internal Revenue Service. (Russell, William) (Entered: 12/30/2010)
02/22/2011	<u>22</u>	REPLY to Response to Motion re <u>18</u> MOTION for Summary Judgment <i>Internal Revenue Service's Response to Cross Motion for Summary Judgment</i> filed by Internal Revenue Service. (Attachments: # <u>1</u> Internal Revenue Service's Response to Rodriguez's Statement of Uncontested Facts) (Russell, William) (Entered: 02/22/2011)
03/07/2011	<u>23</u>	RESPONSE in Opposition re <u>18</u> MOTION for Summary Judgment filed by Jose Nuesi Rodriguez. (Maresca, Elizabeth) (Entered: 03/07/2011)
03/31/2011	<u>24</u>	SCHEDULING ORDER: Oral argument has been scheduled for 5/17/11 at 12 PM before Judge Raymond J. Dearie in Courtroom 10A–S. Ordered by Chief Judge Raymond J. Dearie on 3/30/2011. (Chee, Alvin) (Entered: 03/31/2011)
05/17/2011	<u>25</u>	ORDER REFERRING MOTION: Defendant's <u>18</u> motion for summary judgment is hereby referred to Magistrate Judge Pohorelsky for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). Ordered by Senior Judge Raymond J. Dearie on 5/17/2011. (Chee, Alvin) (Entered: 05/17/2011)
03/06/2012	<u>26</u>	NOTICE by Internal Revenue Service <i>Regarding Additional Pages Produced in Part</i> (Russell, William) (Entered: 03/06/2012)
08/31/2012	<u>27</u>	REPORT AND RECOMMENDATIONS re <u>18</u> MOTION for Summary Judgment filed by Internal Revenue Service. Objections to RR due by 9/17/2012. Ordered by Magistrate Judge Viktor V. Pohorelsky on 8/31/2012. (Pohorelsky, Viktor) (Entered: 08/31/2012)

09/14/2012	<u>28</u>	OBJECTION to <u>27</u> Report and Recommendations filed by Jose Nuesi Rodriguez. (Maresca, Elizabeth) (Entered: 09/14/2012)
09/24/2012	<u>29</u>	ORDER ADOPTING REPORT AND RECOMMENDATION: Having reviewed Magistrate Judge Pohorelsky's careful analysis and plaintiff's objections, the Court adopts the Report and Recommendation in full. Defendant is directed to produce all of the withheld documents to the Court for in camera review, consistent with Magistrate Judge Pohorelsky's recommendation. Ordered by Judge Raymond J. Dearie on 9/24/2012. (Chee, Alvin) (Entered: 09/24/2012)
10/04/2012		SCHEDULING ORDER: By October 26, 2012, the defendant shall electronically file under seal and ex parte all of the withheld documents for in camera review. Ordered by Magistrate Judge Viktor V. Pohorelsky on 10/4/2012. (Toritto, Jim) (Entered: 10/04/2012)
10/26/2012	<u>30</u>	Letter <i>transmitting documents for inspection in camera (SEALED and EX PARTE)</i> by Internal Revenue Service (Attachments: # <u>1</u> Documents submitted for inspection in camera) (Russell, William) (Entered: 10/26/2012)
04/16/2013	<u>31</u>	REPORT AND RECOMMENDATIONS re <u>18</u> MOTION for Summary Judgment by Internal Revenue Service & <u>20</u> RESPONSE to Motion & Plaintiff's Cross Motion & Opposition to Defendant's Motion for Summary Judgment. Any objections to the RR must be filed with the Clerk of Court within 14 days of receipt of this report. Ordered by Magistrate Judge Viktor V. Pohorelsky on 4/16/2013. (Newton, Joan) (Entered: 04/16/2013)
05/13/2013	<u>32</u>	ORDER ADOPTING REPORT AND RECOMMENDATION: On 4/16/13, Magistrate Judge Pohorelsky recommended that defendant's motion for summary judgment be granted and that plaintiff's cross-motion for summary judgment be denied. Neither party filed objections. This Court adopts Magistrate Judge Pohorelsky's Report and Recommendation in full, for the reasons stated in his Recommendation. Forwarded for judgment. Ordered by Judge Raymond J. Dearie on 5/13/2013. (Chee, Alvin) (Entered: 05/13/2013)
05/15/2013	<u>33</u>	CLERK'S JUDGMENT: ORDERED and ADJUDGED that Defendant's motion for summary judgment is granted; and that Plaintiff's cross-motion for summary judgment is denied. Ordered by Clerk of Court on 5/15/2013. (Chee, Alvin) (Entered: 05/15/2013)